

salesperson with Compaq Computers, Inc.,<sup>20</sup> emailed Steve Kim (HISD) to thank him for meeting him for lunch last week and stating "I'm very eager to begin strategizing on how HISD and Compaq can intensify our partnership."<sup>21</sup> In the same email, Mr. Thomas offered Mr. Kim several dates to go to a University of Texas game, noting his commitment to take Mr. Kim to such a game. *Id.*

In addition to this communication, during this same time period, there is also correspondence that demonstrates that HISD had pre-determined that HP, Lakehills, ACS, and MSE would continue to be HISD's vendors prior to the completion of the Funding Year 2002 competitive bidding process. For example, on September 14, 2001, Wendee (a/k/a Wendy) Brite, an employee of MSE, offered to forward to Steve Kim a confidential letter from Compaq Computers to MSE regarding pricing for equipment.<sup>22</sup> She stated, "You know I could get in BIG BIG trouble for faxing over this by Compaq!! Show me love. Frankie [Wong, MSE's owner] could lose his Compaq authorization." *Id.* On October 1, 2001, Ms. Brite informed Steve Kim that "Frankie [Wong] brought you a cool surprise if we get to order those servers and get them out this month" and asks Kim to name his price.<sup>23</sup> Mr. Kim responded by noting that Scott Blakenship of ACS could be more assertive. *Id.* Ms. Brite replies, "Oh please Scott [Blakenship of ACS] is a pain and they got 100 more servers than we did and an extra school and we have proved how wonderful we are!! Don't you want to get something at the golf tournament??? I do the drawings!" *Id.*

Further, on November 15, 2001, Jill Duncan,<sup>24</sup> reminded HISD employees that they needed to respond to every vendor's request for additional information and to appear to treat all proposals evenly and fairly. Specifically, Ms. Duncan told Steve Kim (HISD) that they had to respond to this vendor's request for information because "[i]t's all in the spirit of the 'competitive bid process.' If we don't respond at all, he could complain to SLD that he was overlooked."<sup>25</sup> Mr. Kim asked if he needed to do anything and Ms. Duncan replied, "yes, please e-mail him with either the server parts or have Thomas email him a router part # that he can quote." *Id.* On the date of the HISD's Pre-Proposal Conference, December 17, 2001, Ms. Duncan told HISD employees Steve Kim, Thomas Wright, Timothy Smith, and Bill Edwards that they had to take the Pre-Bid conferences "very seriously (even if you do not want to be there . . .)." She explained that:

One desirable behavior would be to entertain questions from different vendors, even though we may not be directly interested in employing them or their solution. We must set the environment to make the proposers feel as though

<sup>20</sup> Compaq Computers, Inc. merged with Hewlett Packard Company in the 2000/2001 time frame. Thereafter, Mr. Thomas was a salesperson with HP until his resignation date on October 13, 2005.

<sup>21</sup> See Sept. 26, 2001 email from Mr. Thomas (Compaq) to Mr. Kim (HISD) (attached at Tab 14).

<sup>22</sup> See Sept. 14, 2001 email chain between Ms. Brite (MSE) and Mr. Kim (HISD) (attached at Tab 15).

<sup>23</sup> See Oct. 1, 2001 email chain between Ms. Brite (MSE) and Mr. Kim (HISD) (attached at Tab 16).

<sup>24</sup> Ms. Duncan was HISD's principal E-Rate person while she was employed with HISD. In June 2003, Ms. Duncan co-founded the Origins Group, L.L.C. and became HISD's contracted E-Rate consultant.

<sup>25</sup> See Nov. 15, 2001 email chain between Ms. Duncan (HISD's E-Rate consultant) to Mr. Kim (HISD) (attached at Tab 17).

each proposal will be considered evenly and fairly among the others.<sup>26</sup>

It also appears that HISD employees accepted meals, gifts, and other gratuities from vendors who were seeking contract awards from HISD. For example, on August 9, 2001, about six weeks before HISD posted its Form 470 for Funding Year 2002, Wendee Brite (MSE) met with Steve Kim (HISD) at Fogo de Chao for lunch.<sup>27</sup> About one month later, Ms. Brite (MSE) invited HISD employees Steve Kim, Nancy Burkhart, and Daryl Ann Borel to MSE's annual golf tournament.<sup>28</sup> Mr. Kim (HISD) replied to Ms. Brite and informed her that she "really [knew] how to ingratiate yourselves with the new OFFICIAL head guy in Technology....Considering he does not have any established relationship with you...only ACS for now...." *Id.* Ms. Brite responded by noting that she knows that he "loves ACS more than us" and that Frankie [Wong] was going to invite him. *Id.* On December 4, 2001, three days before HISD issued its RFPs, Frankie Wong (MSE) informed Steve Kim (HISD) that he "spoke with Shearrard today and he was going to try and get Compaq to let you keep the demo Blackberry. I told Shearrard if he had a problem doing that, just bill me for it. So don't worry about getting another one."<sup>29</sup>

Throughout 2002, many other meals and gratuities were offered and provided by HISD's vendors, MSE, ACS, and HP to HISD employees. From April 2002 through October 2002, the following meals and other gratuities were offered to and were often accepted by HISD employees:

- April 12, 2002 – HISD vendor Woodlands Network Solutions and Analytical Computer Services hosted a "Welcome to the Weekend" session at Dave and Busters. HISD employees Daryl Ann Borel, Thomas Wright, Gary Teeter, Deborah Hall, David Cherry, Nancy Burkhart, Steve Kim, and Jill Duncan were invited to the event with a fajita buffet, drinks, pool, and game tokens.<sup>30</sup>
- May 14, 2002 - Shearrard Thomas (HP) met with HISD employees (Steve Kim & Timothy Smith) and Larry Lehmann (Region IV ESC/TCPN) at Quizno's. The cost of meal was reported as \$31.19.<sup>31</sup>
- May 17, 2002 - Shearrard Thomas (HP) met with HISD representatives Jill Duncan and Lori A. at Tokyohana. The cost of meal was reported as \$60.00.<sup>32</sup>

<sup>26</sup> See Dec. 17, 2001 email from Ms. Duncan (HISD) to HISD employees, Steve Kim, Thomas Wright, Timothy Smith and Bill Edwards (attached at Tab 18).

<sup>27</sup> See Aug. 8, 2001 email chain between Ms. Brite (MSE) to Mr. Kim (HISD) (attached at Tab 19).

<sup>28</sup> See Sept. 10, 2001 email from Ms. Brite to HISD employees, Steve Kim, Nancy Burkhart, Jill Duncan, Daryl Ann Borel with attached invitation and registration form (attached at Tab 20).

<sup>29</sup> See Dec. 4, 2001 email from Mr. Wong (MSE) to Mr. Kim (HISD) (attached at Tab 21).

<sup>30</sup> See Apr. 5, 2002 email from Peter Abreus (Woodlands Network Solutions) to HISD employees with description of the event (attached at Tab 22).

<sup>31</sup> See Shearrard Thomas' HP expense report for the week of 5/18/02 (attached at Tab 23).

<sup>32</sup> See *id.*



- May 20, 2002 - Shearrard Thomas (HP) purchased cigars from Churchill & Co. for Steve Kim (HISD). The cost of cigars was reported as \$24.00.<sup>33</sup>
- June 4, 2002 - Shearrard Thomas (HP) met with MSE representatives (Bill Froechtenicht, Wendee Brite, Ashley Brite) and HISD (Steve Kim and Timothy Smith) at P. F. Chang's. The cost of the meal was reported as \$220.00.<sup>34</sup>
- June 10, 2002 - Shearrard Thomas (HP) met with MSE representatives (Frankie Wong, Bill Froechtenicht, Wendee Brite, Ashley Brite), HISD representatives (Steve Kim and Timothy Smith, Jill Duncan), and Larry Lehmann (Regional IV ESC/TCPN) at Little Pappasitos. The cost of the meal was reported as \$163.00.<sup>35</sup>
- June 19, 2002 - HP representatives Shearrard Thomas and Brandon Casement (HP) met with Jill Duncan (HISD) and Angela Smith (CGS) at Paesanos Riverwalk Restaurant (d/b/a Swig, Inc.) in San Antonio, Texas. The cost was reported as \$84.00.<sup>36</sup>
- July 2, 2002 - Shearrard Thomas (HP) met with Steve Kim (HISD) and Frankie Wong (MSE) at Collina's Italian Café. The cost of the meal was reported as \$52.00.<sup>37</sup>
- July 10, 2002 - Shearrard Thomas (HP) met with HISD representatives (Steve Kim & Bill Edwards) at Vietopia. The cost of the meal was reported as \$38.00.<sup>38</sup>
- August 13, 2002 - Shearrard Thomas (HP) met with HISD representatives (Timothy Smith and Jill Duncan) and MSE representatives (Frankie Wong, Bill Froechtenicht, Dan Herrera, and Wendee Brite) at UGO's Italian Grill. The cost of the meal was reported as \$90.00.<sup>39</sup>
- October 4, 2002 - MSE hosted its annual golf tournament. On August 16, 2002, Frankie Wong (MSE) asked Brian Bennett (HP) whether HP could sponsor a hole at the tournament and noted that representatives from San Antonio, Dallas, and Houston school districts would be present.<sup>40</sup>
- October 15, 2002 - Shearrard Thomas (HP) met with HISD representatives (Jill Duncan and Lori A.) and Wendee Brite (MSE) at Tokyohana. The cost of the meal was reported as \$76.00.<sup>41</sup>

<sup>33</sup> See Shearrard Thomas' HP expense report for the week of 5/25/02 (attached at Tab 24).

<sup>34</sup> See Shearrard Thomas' HP expense report for the week of 6/8/02 (attached at Tab 25).

<sup>35</sup> See Shearrard Thomas' HP expense report for the week of 6/15/02 (attached at Tab 26).

<sup>36</sup> See Shearrard Thomas' HP expense report for the week of 6/22/02 (attached at Tab 27).

<sup>37</sup> See Shearrard Thomas' HP expense report for the week of 7/1/02 to 7/20/02 (attached at Tab 28).

<sup>38</sup> See *id.*

<sup>39</sup> See Shearrard Thomas' HP expense report for the week of 8/17/02 (attached at Tab 29).

<sup>40</sup> See Aug. 16, 2002 email chain between Mr. Wong (MSE) and Mr. Bennett (confirming that HP would be happy to help sponsor the event and would pay MSE \$2,000.00 to do so) (attached at Tab 30).

<sup>41</sup> See Shearrard Thomas' HP expense report for the week of 10/19/02 (attached at Tab 31).

- October 31, 2002 – Shearrard Thomas (HP) met with HISD representatives Laura Palmer and Jill Duncan at HIDO Japanese Grill. The cost of the meal was reported as \$54.00.<sup>42</sup>
- November 1, 2002 – Shearrard Thomas (HP) met with HISD representatives, Steve Kim and Timothy Smith, at Café Pappadeaux. The cost of the meal was reported as \$62.00.<sup>43</sup>

The acceptance of these meals and other gratuities by HISD employees violated E-Rate Program rules regarding fair and open competitive bidding and the avoidance of improper relationships between E-Rate program applicants and their service providers. It also violated HISD's own policies that prohibited HISD employees from accepting such gifts and gratuities from HISD vendors. HISD's Conflict of Interest Policy, DBD (Local), issued on May 21, 2001 states: "An employee shall not accept or solicit any gift, favor, service or other benefit that could reasonably be construed to influence the employee's discharge of assigned duties and responsibilities."<sup>44</sup> All of the meals, gifts, and other gratuities that were offered by HP, MSE, and ACS and accepted by HISD employees violated HISD's policy.

Based in large part on the extensive gifts and other gratuities that were provided by HISD's vendors to its employees, HISD entered into a Settlement Agreement on March 8, 2010 with the U.S. Department of Justice to settle the government's claims against HISD (hereinafter the "HISD Settlement Agreement"). Specifically, the HISD Settlement Agreement stated that HISD was alleged to have submitted and caused to be submitted false claims for payment to USAC and the FCC in connection with FRNs originally awarded to ACS or its successor Lakehills Consulting, LP, MSE, and any members of Acclaim Professional Services ("Acclaim").<sup>45</sup> The government alleged that HISD engaged in non-competitive bidding practices, including the provision of extensive gratuities by Acclaim participants to HISD employees with respect to the following Requests for Proposals ("RFPs") for the following contracts: 02-14-04 (Network cabling), 02-12-07 (Network Hardware), 02-12-10 (Network Maintenance), 03-11-05 (Network Cabling), 3-11-03 (Network Hardware), 03-11-04 (Network Maintenance), 04-09-10 (Basic Maintenance), 04-09-14 (Network Hardware), 04-09-15 (Network Cabling), 05-08-02 (Advanced Network Maintenance), 06-08-11 (Network Development Hardware), 06-08-14 (Network cabling), 06-08-13 (Network Basic Maintenance), 06-08-12 (Advanced Network Development Hardware). *Id.* As part of the HISD Settlement Agreement, HISD agreed not to rely on any of the RFPs listed in the Preamble to the Settlement Agreement, or any of the contracts entered into pursuant to these RFPs to receive additional E-Rate program funding from USAC. *Id.* at Section III, ¶ 2(b).

<sup>42</sup> See Shearrard Thomas' HP expense report for the week of 11/2/02 (attached at Tab 32).

<sup>43</sup> See *id.*

<sup>44</sup> See Tab 33.

<sup>45</sup> See HISD Settlement Agreement at Preamble, ¶ C (attached at Tab 34). Members of Acclaim Professional Services ("Acclaim") included: Acclaim Professional Services, ACS, Lakehills Consulting, LP, MSE, Technology Cabling Solutions and Woodlands Network Solutions. The owner and managing partner of Acclaim was Larry Lehmann and the part-owners were Frankie Wong, Alan Chan, Bill Froechnicht, Frank Trifilio, and Kevin Killebrew.



Further, all of ACS' FRNs for HISD's Form 471 Application No. 295389 were subject to rescission per the HISD Settlement Agreement. *See id.* at Appendix B, Part 2.

FCC regulations governing the Schools and Libraries Support Mechanism require applicants and service providers to comply with all FCC rules and all applicable state and local procurement laws. *See, e.g.,* 47 C.F.R. §§ 47 C.F.R. §§ 54.504, 54.511. Because HISD violated the FCC's competitive bidding rules and local procurement laws, USAC is required to rescind the funding commitments issued for Form 471 Application No. 295389 and recover any improperly disbursed funds in accordance with FCC directives.<sup>46</sup> USAC is also required to rescind the funding commitments because it does not appear that HISD had contracts in place with Region IV ESC at the time it filed its Form 471 for Funding Year 2002. As explained above, HISD stated on its Form 471 that the contracts were awarded to Regional IV ESC on January 10, 2002. However, in HISD's bidding documentation, it shows that the contracts were awarded to Regional IV ESC on February 6, 2002 and were approved by HISD's BOE on February 14, 2002.

## 2. Funding Year 2003

For Funding Year 2003, HISD issued RFPs to further describe the services and equipment it was seeking on November 15, 2002 for projects 02-12-04 (Network Cabling), 02-12-07 (Network Hardware & Workstations), and 02-12-10 (Network Maintenance) (attached at Tabs 35, 36 & 37). The opening bid date was December 11, 2002. On December 11, 2002, HISD received three identical responses with identical pricing lists for equipment and services from: (1) Acclaim Professional Services, Inc.; (2) ACS, MSE, and Region IV ESC; and (3) ACS (individually) (attached at Tabs 38A-C, 39A-C, & 40A-C). Further, all of these responses included ACS, MSE, and Lakehills as partners for the projects and HP was the major supplier of the equipment. *Id.* On December 18, 2002, Steve Kim (HISD) prepared the bid tabulation for project 02-12-07 and found that the ACS/MSE response had the lowest cost (although its pricing was identical to pricing provided by Acclaim and ACS/MSE/Region IV ESC).<sup>47</sup> On December 19, 2002, Frank Trifilio (ACS) requested that MSE be added as co-respondent for ACS's individual responses for projects 02-12-04, 02-12-07, and 02-12-10.<sup>48</sup> On December 20, 2002, HISD declared ACS and MSE the bid winners.<sup>49</sup> However, HISD

<sup>46</sup> *See Changes to the Bd. Of Directors of the Nat'l Exchange Carrier Ass'n, Federal-State Joint Bd. On Universal Service*, CC Docket Nos. 96-45, 97-21, Order, FCC 99-291 (1999) ("Commitment Adjustment Order"); *Changes to the Bd. Of Directors of the Nat'l Exchange Carrier Ass'n, Federal-State Joint Bd. on Universal Service*, CC Docket nos. 96-45, 97-21, Order, 15 FCC Rcd 7197 (1999) ("Commitment Adjustment Waiver Order"); *Changes to the Bd. of Directors of the Nat'l Exchange Carrier Ass'n, Federal-State Joint Bd. on Universal Service*, CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 22975 (2000) ("Commitment Adjustment Implementation Order").

<sup>47</sup> *See* Bid Tabulations for projects 02-12-04, 02-12-07, 02-12-10 and the pricing lists in the responses by Acclaim and ACS/MSE/REGION IV ESC (attached at Tabs 41, 42, & 43). Tab 42 is the one for project 02-12-07. It should be noted that this bid tabulation finding ACS/MSE's bid to be the winner was prepared the day before Mr. Trifilio (ACS) requested that MSE be added as a co-respondent to ACS' bid responses for projects 02-12-04, 02-12-07, and 02-12-10.

<sup>48</sup> *See* Tab 44.

<sup>49</sup> *See* Bid Tabulations for 02-12-04, 02-12-07, and 02-12-10. HISD's BOE approved the contracts on January 9, 2003 (attached at Tabs 41, 42, & 43).

did not post its Form 470, Application No. 13040000441848, until December 16, 2002, with an ACD of January 13, 2003 (attached at Tab 45). HISD by declaring ACS and MSE the bid winners on December 20, 2002 violated the FCC 28-day competitive bidding rule.<sup>50</sup> E-Rate Program rules require applicants to wait 28 days from the date the Form 470 was posted or the RFP was issued (using the latest date of the two) which in this case was December 16, 2002.<sup>51</sup> HISD certified its Form 471 Application Nos. 377451 and 367296 on February 5, 2003 selecting ACS as its vendor for all FRNs requested and noting that the contract award date was February 16, 2003 (attached at Tabs 46 & 47).

There is also evidence that HISD employees met with ACS, MSE, and HP representatives during the competitive bidding period for Funding Year 2003. For example, on December 10, 2002, Steve Kim (HISD) appears to have met with representatives from HP, ACS, and MSE.<sup>52</sup> On December 16, 2002, Steve Kim (HISD) scheduled a meeting with Larry Lehmann (based on Mr. Kim's calendar entry for that date).<sup>53</sup> On December 18, 2002, Steve Kim (HISD) met with HISD procurement employees Guy Mazzola and Ken Phillips, as well as with Frank Trifilio (ACS) and Frankie Wong (MSE) to discuss the RFP.<sup>54</sup> On December 19, 2002, three days after HISD posted its FCC Form 470, Scott Blakenship (ACS) sponsored a lunch for HISD employees Laura Palmer, Steve Kim, Jill Duncan, Bill Edwards, Timothy Smith, Jacqueline Martin, and Jose Cervera at Carrabba's.<sup>55</sup> On December 20, 2002, the same date HISD announced MSE and ACS the bid winners, MSE had lunch with HISD employees at P.F. Chang's.<sup>56</sup>

Further, for Funding Year 2003, it appears that HISD and its vendors entered into an arrangement where HISD would subcontract members of its IT department from MSE and the cost of these employees would be rolled into the MSE/ACS contracts for E-Rate related services. On December 30, 2002, Frankie Wong (MSE) emailed Shearrard Thomas (HP), Ed Chambers (HP), and Bill Froechtenicht (MSE) regarding the plan for ACS and MSE to hire 10-12 HISD employees and subcontract them back to HISD using E-Rate Program funding to pay for the employees.<sup>57</sup> According to Steve Kim's calendar entry for January 22, 2003, Mr. Kim met with Larry Lehmann and "the vendors to discuss erate employees" at 10:00 a.m. and he met with the "LAN erate employees" at

<sup>50</sup> See *supra* n.6.

<sup>51</sup> See Step 3: Open a Competitive Bidding Process (Form 470), <http://www.usac.org/sl/applicant/step03/> (last visited Feb. 3, 2011).

<sup>52</sup> See Steve Kim's calendar entry for December 10, 2002 (attached at Tab 48).

<sup>53</sup> See Steve Kim's calendar entry for December 16, 2002 (attached at Tab 49).

<sup>54</sup> See Steve Kim's calendar entry for December 18, 2002 (attached at Tab 50).

<sup>55</sup> See Dec. 17, 2002 email from Laura Palmer to HISD employees confirming lunch with Scott Blakenship (ACS) at 11:00 am at Carrabba's on Kirby (attached at Tab 51). See also Steve Kim's calendar entry for December 17, 2002 noting "Lunch with ACS at Carrabas" (attached at Tab 52).

<sup>56</sup> See Steve Kim's calendar entry for December 20, 2002 noting "Lunch with MSE" (attached at Tab 53). See also, Dec. 18, 2002 email from Laura Palmer (HISD) to HISD employees Steve Kim, Jill Duncan, Bill Edwards, Timothy Smith, Jose Cervera, and Jacqueline Martin confirming lunch with MSE would be at P.F. Chang's on Friday [December 20] at 11:15 am, "[b]e there or be square!" (attached at Tab 54).

<sup>57</sup> See Dec. 30, 2002 email from Frankie Wong (MSE) to HP (Shearrard Thomas & Ed Chambers) and Bill Froechtenicht (MSE) discussing plan and upcoming meeting with Steve Kim (HISD) (attached at Tab 55).

3:00 p.m. (attached at Tab 56). Additionally, on July 22, 2003, Ed Chambers (HP) emailed Shearrard Thomas (HP) summarizing a meeting with Steve Kim (HISD).<sup>58</sup> In the email, Mr. Chambers states, "I wanted to mention to you how [Steve Kim] did not think the seats management model of rolling the cost of personnel into the product price had any merit. Funny how Frankie [Wong] now has HISD personnel working for him with the cost being rolled into the product." *Id.* The correspondence exchanged among HISD vendors regarding this arrangement supports finding that HISD may have used E-Rate funding to pay for its IT staff in violation of program rules. According to the October 18, 2002 Eligible Service List ("ESL"), personnel costs, defined as labor costs for schools and library personnel were not eligible for discount.<sup>59</sup>

There is also evidence HISD pre-determined that it would continue to use HP, ACS, and MSE as its vendors. For example, on October 22, 2002, Ed Chambers (HP) emailed Steve Kim (HISD) to discuss several outstanding issues, including, HISD moving forward with HP's Gold Support for the SAN.<sup>60</sup> Mr. Kim asked whether this service could be obtained through a HP reseller and Mr. Chambers confirmed that it could be and stated: "Do you have a preference in re-seller? Otherwise, I'll put the quote together for Frankie [Wong] to submit on his letterhead." *Id.* This communication demonstrates that HISD may have surrendered control over its competitive bidding process by allowing HP to prepare a bid for MSE to submit in order to win HISD's contract for this project.<sup>61</sup> It also demonstrates that HISD may have predetermined that its vendors would continue to be HP, MSE, and ACS.

Throughout 2003, as in 2002, many other meals, trips, and other gratuities were offered and/or provided by HISD's vendors, MSE, ACS, and HP to HISD employees:

- January 3, 2003 – Shearrard Thomas and Edward Chambers (HP) met with Steve Kim (HISD) and MSE representatives Frankie Wong and Bill Froechtenicht at Houston's. The cost of the meal was reported as \$172.20.<sup>62</sup>
- April 2, 2003 – Shearrard Thomas (HP) met with Timothy Smith (HISD) at Chachos. The cost of the meal was reported as \$15.96.<sup>63</sup>
- April 6, 2003 – Shearrard Thomas (HP) met with Steve Kim (HISD) at Hollister Grill (aka Sam's Operating Austin Ltd). The cost of the meal was reported as \$139.00.<sup>64</sup>

<sup>58</sup> See July 22, 2003 email from Ed Chambers (HP) to Shearrard Thomas (HP) noting Steve Kim's complaints about HP's regarding the SAN implementation project (attached at Tab 57).

<sup>59</sup> See Eligible Services List of the Schools & Libraries Support Mechanism at 34 (Oct. 18, 2002) (attached at Tab 58).

<sup>60</sup> See Oct. 22, 2002 email exchange between Ed Chambers (HP) and Steve Kim (HISD) (attached at Tab 59).

<sup>61</sup> See *MasterMind Order*, 16 FCC Rcd at 4032, ¶ 10 ("We find that an applicant violates the Commission's competitive bidding requirements when it surrenders control of the bidding process to a service provider that participates in that bidding process.").

<sup>62</sup> See Shearrard Thomas' HP expense report for the week of 1/4/03 (attached at Tab 60).

<sup>63</sup> See Shearrard Thomas' HP expense report for the week of 4/12/03 (attached at Tab 61).

<sup>64</sup> See Shearrard Thomas' HP expense report for the week of 5/10/03 (attached at Tab 62).



- April 8, 2003 – Shearrard Thomas (HP) met with Steve Kim (HISD) at Champps Americana. The cost of the meal was reported as \$31.84.<sup>65</sup>
- April 9, 2003 – Shearrard Thomas (HP) offered Steve Kim (HISD) “4 premium Astros Tickets” for tomorrow’s game.<sup>66</sup>
- April 10, 2003 – Shearrard Thomas (HP) purchased lunch for HISD’s IT staff from Jason’s Deli. The cost of the meals was reported as \$85.00.<sup>67</sup>
- April 22, 2003 – Shearrard Thomas (HP) met with Steve Kim (HISD) at Vietopia. The cost of meal was reported as \$27.00.<sup>68</sup>
- April 23 2003 – Shearrard Thomas (HP) purchased lunch for HISD’s IT staff from Jason’s Deli. The cost of the meals was reported as \$99.87.<sup>69</sup>
- May 2 – 4, 2003 – Shearrard Thomas (HP) paid for Steve Kim’s (HISD) expenses in Las Vegas, Nevada.<sup>70</sup> Costs include the following:
  - May 2, 2003 – Rain Nite Club in Las Vegas. The cost was reported as \$165.00.<sup>71</sup>
  - May 2, 2003 – Noodle Asia in Las Vegas. The cost was reported as \$73.00.<sup>72</sup>
  - May 2, 2003 – Gallagher’s Steakhouse in Las Vegas. The cost for drinks and the meal was reported as \$484.39.<sup>73</sup>
  - May 2, 2003 – Pyramid Café in Las Vegas. The cost was reported as \$35.00.<sup>74</sup>
  - May 2, 2003 – Ra Luxor Night Club in Las Vegas. The cost was reported as \$79.00.<sup>75</sup>
  - May 2, 2003 – Rio Copacabana in Las Vegas. The cost was reported as \$95.00.<sup>76</sup>
  - May 3, 2003 – Rangoon in Las Vegas. The cost was reported as \$64.29.<sup>77</sup>
  - May 4, 2003 – Rain Nite Club in Las Vegas. Cost was reported as \$182.00.<sup>78</sup>

<sup>65</sup> See *supra* note 63 (Tab 61).

<sup>66</sup> See April 9, 2003 email from Shearrard Thomas (HP) to Steve Kim (HISD) (attached at Tab 63).

<sup>67</sup> See *supra* note 63 (Tab 61).

<sup>68</sup> See Shearrard Thomas’ HP expense report for the week of 4/26/03 (attached at Tab 64). See also Apr. 22, 2003 email exchange between Shearrard Thomas (HP) and Steve Kim (HISD) confirming lunch (attached at Tab 65).

<sup>69</sup> See *supra* Note 68 (Tab 64).

<sup>70</sup> See Shearrard Thomas’ HP expense report for the week of 5/3/03 (attached at Tab 66).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*



- Lodging at Mandalay Bay in Las Vegas for Steve Kim was reported as \$800.00.<sup>79</sup>
- May 16, 2003 – Frankie Wong (MSE) met with HISD representatives Bill Edwards, Steve Kim, Laura Palmer and Jill Duncan. (On May 15, 2003, Steve Kim confirmed lunch with Mr. Wong and Bill Edwards.)<sup>80</sup>
- May 16, 2003 – Shearrard Thomas (HP) met with Timothy Smith (HISD) at Guadalajara Mexican Bar. The cost of the meal was reported as \$36.00.<sup>81</sup>
- June 3, 2003 – Shearrard Thomas (HP) met Laura Palmer (HISD) at an Astros game at Minute Maid Park. The cost of outing was reported as \$154.00.<sup>82</sup>
- June 10, 2003 – HP representatives (Shearrard Thomas, Brian Bennett, and Rusty Lecamus) met with Steve Kim (HISD) and Bill Froechtenicht (MSE) at Carrabba's. The cost of the meal was reported as \$176.55.<sup>83</sup>
- June 24, 2003 – ACS offered to host a day at Astro World for HISD IT employees and their family members on July 26, 2002.<sup>84</sup>
- June 27, 2003 – Shearrard Thomas (HP) met with Laura Palmer (HISD), Bill Froechtenicht (MSE) and the CEO of the Detroit Public Schools at Metropolitan Grill in Seattle, Washington. The cost of the meal was reported as \$67.00.<sup>85</sup>
- June 28, 2003 – Shearrard Thomas (HP) met with Laura Palmer (HISD) and MSE representatives at Argosy's in Seattle, Washington. Cost of the meal was reported as \$104.50.<sup>86</sup>
- June 28, 2003 – Shearrard Thomas (HP) met with Laura Palmer (HISD), MSE representatives, and the CEO of the Detroit Public Schools at Ivar's Acres of Clams in Seattle, Washington. The cost of the meal was reported as \$390.23.<sup>87</sup>

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> See May 15, 2003 email exchange between Steve Kim (HISD) and Frankie Wong (MSE) (attached at Tab 67).

<sup>81</sup> See Shearrard Thomas' HP expense report for the week of 5/17/03 (attached at Tab 68).

<sup>82</sup> See Shearrard Thomas' HP expense report for the week of 6/7/03 (attached at Tab 69).

<sup>83</sup> See Shearrard Thomas' HP expense report for the week of 6/14/03 (attached at Tab 70).

<sup>84</sup> See June 24, 2003 email from Laura Palmer (HISD) to HISD employees Andrea Teasley, Donna Woods, Steve Kim, Mark Hill, and Bill Edwards (attached at Tab 71). Ms. Palmer further explains that the event was limited to 50 persons and that ACS would provide lunch at a reserved pavilion at the park. *Id.* She also explained that HISD would hold a lottery to determine what members of the IT staff could go to the event. *Id.*

<sup>85</sup> See Shearrard Thomas' HP expense report for the week of 6/28/03 (attached at Tab 72).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

- June 30, 2003 – Shearrard Thomas (HP) met with Laura Palmer (HISD) at Belltown Billiards in Seattle, Washington. The cost of the outing was reported as \$64.00.<sup>88</sup>
- July 9, 2003 - Shearrard Thomas (HP) met with Steve Kim (HISD) at Oisnii Japanese restaurant. The cost of the meal was reported as \$37.66.<sup>89</sup>
- July 16, 2003 – Shearrard Thomas met with HISD representatives, Steve Kim and Timothy Smith at Strawberry Patch. The cost of the meal was reported as \$87.04.<sup>90</sup>
- July 22, 2003 – Shearrard Thomas met with Steve Kim (HISD) at P.F. Chang's. The cost of the meal was reported as \$50.07.<sup>91</sup>
- July 25, 2003 – Shearrard Thomas met with Steve Kim (HISD) at Vietopia (aka Nguyen Thi Ngheim Corp.). The cost of the meal was reported as \$32.00.<sup>92</sup>
- August 6, 2003 – Shearrard Thomas (HP) provided lunch from Quizno's to HISD technology staff. The cost of the meals was reported as \$424.51.<sup>93</sup>
- September 2, 2003 – Shearrard Thomas (HP) met with Timothy Smith (HISD) at Little Pappasito's. The cost of the meal was reported as \$44.00.<sup>94</sup>

The acceptance of these meals, trips, and other gratuities by HISD employees violated E-Rate Program rules regarding fair and open competitive bidding and the avoidance of improper relationships between E-Rate program applicants and their service providers. It also violated HISD's own policies that prohibited HISD employees from accepting such gifts and gratuities from HISD vendors. HISD's Conflict of Interest Policy, DBD (Local), issued on May 21, 2001 states: "An employee shall not accept or solicit any gift, favor, service or other benefit that could reasonably be construed to influence the employee's discharge of assigned duties and responsibilities." On October 9, 2002, HISD adopted Standard Practice Memorandum, No. 4168, which strengthened the prohibition on gifts and mandated reporting requirements.<sup>95</sup> This memorandum provides the following Standards of Conduct:

Gifts. No administrative employee of HISD shall accept any gift, favor, loan, or service that might reasonably tend to influence him or her in the discharge of his or her official duties.

<sup>88</sup> *Id.*

<sup>89</sup> See Shearrard Thomas' HP expense report for the week of 7/12/03 (attached at Tab 73).

<sup>90</sup> See Shearrard Thomas' HP expense report for the week of 7/19/03 (attached at Tab 74).

<sup>91</sup> See Shearrard Thomas' HP expense report for the week of 7/26/03 (attached at Tab 75).

<sup>92</sup> *Id.*

<sup>93</sup> See Shearrard Thomas' HP expense report for the week of 8/4/03 to 8/16/03 (attached at Tab 76).

<sup>94</sup> See Shearrard Thomas' HP expense report for the week of 9/6/03 (attached at Tab 77).

<sup>95</sup> See Tab 78.



(1) Approval and Reporting of Gifts. Any administrative employee who has accepted any gift, favor, loan, or service in excess of \$25 in value is required to file an itemized statement and attach it to the Conflict of Interest Statement at the time he or she signs the statement . . . It is strongly recommended, however, that no administrative employee accept any gift, favor, loan or service in excess of \$25 in value without securing prior approval from his or her immediate supervisor. Such approval must be secured in writing. If an administrator follows this process, it will not be necessary to annually list an itemized statement of those gifts, favors, loans, or services that are in excess of \$25 in value. The accumulated value of unreported items from any single source should never exceed \$50 annually.

(2) Expense-Paid Trips. No administrator should ever accept a trip which has a company, firm, or institution paying the cost of said trip without securing written approval from the district in advance. *Id.* at ¶ 6a.

Confidential Information. No administrative employee of HISD shall disclose confidential information gained by reason of his or her official position, nor shall he or she otherwise use such information for his or her personal gain or benefit. *Id.* at ¶ 6(d).

The offering and acceptance of these gifts also violated the conditions of HISD's RFPs for projects 02-12-04, 02-12-07, and 02-12-10. All of these RFPs included Section 3.6 "Supplier Conduct" which states: "No gratuities of any kind will be accepted including meals, gifts, or tips. Violation of these conditions will subject the supplier to immediate disqualification from the proposal process."<sup>96</sup> Based on the language of HISD's RFPs, ACS, MSE and HP should have been disqualified from the bidding process in light of their violation of this condition in HISD's RFPs.

Further, all of ACS' FRNs for HISD's Form 471 Application Nos. 367296 and 377451 were subject to rescission per the HISD Settlement Agreement. *See HISD Settlement Agreement* at Appendix B, Part 2.

FCC regulations governing the Schools and Libraries Support Mechanism require applicants and service providers to comply with all FCC rules and all applicable state and local procurement laws. *See, e.g.,* 47 C.F.R. §§ 47 C.F.R. §§ 54.504, 54.511. Because HISD violated the FCC's competitive bidding rules and its policies, USAC is required to

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<sup>96</sup> *See* Tabs 35, 36 & 37.

rescind the funding commitments issued for Form 471, Application Nos. 367296 and 377451, and recover any improperly disbursed funds in accordance with FCC directives.<sup>97</sup> USAC is also required to rescind the funding commitments for these two applications because HISD awarded the contracts to ACS and MSE prior to the end of the mandatory 28-day competitive bidding period. As explained above, HISD awarded the contracts to ACS and MSE on December 20, 2002, but the ACD for its Form 470 was January 13, 2003.

### 3. Funding Year 2004

For Funding Year 2004, HISD submitted its Form 470, Application No. 127510000460413, on October 10, 2003, which had an ACD of November 7, 2003 (attached at Tab 79). For this particular Form 470, HISD noted that it was issuing RFPs for the services sought and that copies of the RFPs were available on its web site. *Id.* HISD issued the following RFPs: RFP 03-11-03 (Network Development, Desktop Computers, Printers and Related Peripheral Devices); RFP 03-11-04 (Network Maintenance); and RFP 03-11-05 (Network Cabling).<sup>98</sup> The Bid Opening Date was November 12, 2003. ACS and MSE submitted responses to these three RFPs on November 12, 2003.<sup>99</sup> ACS, MSE, and Lakehills Consulting were listed as partners for the projects and HP was the major supplier of the equipment. *Id.* On December 5, 2003, HISD awarded contracts to ACS and MSE, and HISD's BOE approved the contracts on December 12, 2003.<sup>100</sup> HISD filed Form 471, Application No. 398827, on January 28, 2004 selecting ACS as its vendor (attached at Tab 88). The Form 471 noted that HISD awarded ACS contract 03-11-05 on December 11, 2003. *Id.* HISD also filed Form 471, Application No. 398823, on February 4, 2004 selecting ACS as its vendor (attached at Tab 89). The Form 471 noted that HISD awarded ACS contracts 03-11-03, 03-11-04, and 03-11-05 on December 11, 2003. *Id.*

In 2004, as in 2002 and 2003, HISD continued to meet with its vendors during the competitive bidding period. For example, during the week before HISD filed its Form 470, HISD's Steve Kim met with Bill Froechtenicht (MSE) on October 1, 2003 and Scott Blakenship (ACS) on October 2, 2003.<sup>101</sup> On October 15, 2003, Shearrard Thomas (HP) offered to meet with Steve Kim (HISD) for drinks following the Rockets game.<sup>102</sup> On November 30, 2003, Laura Palmer (HISD) met with Shearrard Thomas following the

<sup>97</sup> See *Changes to the Bd. Of Directors of the Nat'l Exchange Carrier Ass'n, Federal-State Joint Bd. On Universal Service*, CC Docket Nos. 96-45, 97-21, Order, FCC 99-291 (1999) ("Commitment Adjustment Order"); *Changes to the Bd. Of Directors of the Nat'l Exchange Carrier Ass'n, Federal-State Joint Bd. On Universal Service*, CC Docket nos. 96-45, 97-21, Order, 15 FCC Rcd 7197 (1999) ("Commitment Adjustment Waiver Order"); *Changes to the Bd. of Directors of the Nat'l Exchange Carrier Ass'n, Federal-State Joint Bd. on Universal Service*, CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 22975 (2000) ("Commitment Adjustment Implementation Order").

<sup>98</sup> See Tabs 80, 81, & 82.

<sup>99</sup> See Tabs 83, 84, & 85.

<sup>100</sup> See HISD's Bid Tabulations for RFPs 03-11-03 and 03-11-05 (attached at Tabs 86 & 87).

<sup>101</sup> See Steve Kim's calendar entries for October 1 and 2, 2003 (attached at Tab 90).

<sup>102</sup> See Oct. 15, 2003 email from Shearrard Thomas (HP) to Steve Kim (HISD) (attached at Tab 91).



Astros game for dessert.<sup>103</sup> On December 1, 2003, Shearrard Thomas sent HISD representatives Timothy Smith and Steve Kim an email with information about HP products that are eligible for E-Rate funding and noting that HISD needed to explain that the HP servers would be used for connectivity and not just storage.<sup>104</sup> On December 5, 2003, HISD completed the Response Tabulation and awarded the contracts to ACS and MSE.

Further, in 2004, as in the previous years, HISD employees were offered and accepted many meals, gifts, and other gratuities from its vendors HP, ACS, and MSE:

- Dec. 19, 2003 – HP sponsored lunch for HISD employees at Fogo De Chao. The cost of the meal was reported as \$676.69.<sup>105</sup>
- Dec. 20, 2003 – Shearrard Thomas (HP) sponsored a dinner for HISD employees (Laura Palmer) at Morton's. The cost of the meal was reported as \$500.00.<sup>106</sup>
- Dec. 27, 2003 – Shearrard Thomas (HP) sponsored a Christmas Party at the Toyota Center Suites for HISD's Public Relations team (Tonie Jones) and Acclaim employees. The cost of the event was reported as \$348.55.<sup>107</sup>
- Jan. 13, 2004 – HP hosted a dinner for the Hawaii DOE and HISD representatives at Fogo de Chao.<sup>108</sup>
- Feb. 1, 2004 – HISD employees, including Steve Kim, attended the Super Bowl game at Reliant Stadium hosted by ACS and MSE.<sup>109</sup>
- Feb. 10, 2004 – Shearrard Thomas (HP) met Laura Palmer (HISD) at Luling City Market Bar-B-Que (aka Renegades, Inc.). The cost of the meal was reported as \$66.78.<sup>110</sup>
- Feb. 12, 2004 – Shearrard Thomas (HP) met Laura Palmer (HISD) at Houston's. The cost of the meal was reported as \$35.00.<sup>111</sup>

<sup>103</sup> See Shearrard Thomas' HP expense report for the week of 11/24/03 to 12/5/2003 (attached at Tab 92). The cost was reported as \$65.00.

<sup>104</sup> See Dec. 1, 2003 email from Mr. Thomas (HP) to HISD representatives, Mr. Kim & Mr. Smith (attached at Tab 93).

<sup>105</sup> See Shearrard Thomas' HP expense report for the week of 12/22/03 to 1/2/04 (attached at Tab 94).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> See Jan. 12, 2004 email from Laura Palmer (HISD) to HISD employees, Bill Edwards, Cathy Minberg, and Steve Kim (attached at Tab 95).

<sup>109</sup> See excerpts from Documentary Appendix Supporting the United States' Preliminary Response to the Trustee's Objection to Claim 21 filed in *In re Lakehills Consulting, L.P.*, Case No. 09-34049 (Bankr. S.D. Tex. Dec. 2, 2010) at DA 407 (attached at Tab 96). Face book value of a 2004 Super Bowl Game ticket was between \$400 - \$600. See <http://www.locksmithsportspicks.com/super-bowl-ticket-prices-12309>.

<sup>110</sup> See Shearrard Thomas' HP expense report for the week of 2/9/04 to 2/20/04 (attached at Tab 97).

<sup>111</sup> *Id.*

- Feb. 24, 2004 – Shearrard Thomas met Steve Kim (HISD) at Uptown Sushi. The cost of the meal was reported as \$83.28.<sup>112</sup>
- April 29, 2004 – Shearrard Thomas (HP) met with Laura Palmer (HISD) at Luling City Market Bar-B-Que (aka Renegades Inc.). The cost of the meal was reported as \$34.85.<sup>113</sup>
- May 18, 2004 – Shearrard Thomas (HP) met with Steve Kim (HISD) and Frankie Wong (MSE) at Uptown Sushi. The cost of the meal was reported as \$110.00.<sup>114</sup>
- June 8, 2004 – Shearrard Thomas (HP) met with HISD representatives Laura Palmer and Tonie Jones and MSE representative Matt Worrell at Champps Americana. The cost of the meal was reported as \$220.00.<sup>115</sup>
- June 9, 2004 – Shearrard Thomas (HP) met with Tonie Jones (HISD) at Rockfish. The cost of the meal was reported as \$58.33.<sup>116</sup>
- June 15, 2004 – Shearrard Thomas (HP) met with Laura Palmer (HISD) at Luling City Market bar-B-Que (aka Renegades Inc.). The cost of the meal was reported as \$72.99.<sup>117</sup>
- July 2, 2004 – Shearrard Thomas (HP) met with Tonie Jones (HISD) at HIDO Japanese Grill. The cost of the meal was reported as \$35.47.<sup>118</sup>
- July 20, 2004 – HP representatives (Shearrard Thomas, Will Clarkson, and Steve Meyer) met with Timothy Smith (HISD) and MSE representatives (Glen Sparks and Allan Foltz) at Little Pappasito's. The cost of the meal was reported as \$116.05.<sup>119</sup>
- Aug. 14, 2004 – Shearrard Thomas (HP) purchased lunch for HISD's IT staff (including Timothy Smith) from Popeye's. The cost of the meals was reported as \$42.88.<sup>120</sup>
- Aug. 27, 2004 – Shearrard Thomas (HP) met with Laura Palmer (HISD), Clear Creek ISD representatives (Nancy Keese and Kim Bennett), and Matt Worrell (MSE) at Pappas Seafood. The cost of the meal was reported as \$170.44.<sup>121</sup>

<sup>112</sup> See Shearrard Thomas' HP expense report for the week of 2/23/04 to 3/5/04 (attached at Tab 98).

<sup>113</sup> See Shearrard Thomas' HP expense report for the week of 4/26/04 to 5/8/04 (attached at Tab 99).

<sup>114</sup> See Shearrard Thomas' HP expense report for the week of 5/17/04 to 5/28/04 (attached at Tab 100).

<sup>115</sup> See Shearrard Thomas' HP expense report for the week of 5/31/04 to 6/11/04 (attached at Tab 101).

<sup>116</sup> *Id.*

<sup>117</sup> See Shearrard Thomas' HP expense report for the week of 6/14/04 to 6/25/04 (attached at Tab 102).

<sup>118</sup> See Shearrard Thomas' HP expense report for the week of 6/27/04 to 7/9/04 (attached at Tab 103).

<sup>119</sup> See Shearrard Thomas' HP expense report for the week of 7/12/04 to 7/23/04 (attached at Tab 104).

<sup>120</sup> See Shearrard Thomas' HP expense report for the week of 8/23/04 to 9/3/04 (attached at Tab 105).

<sup>121</sup> *Id.*



- Oct. 26, 2004 – HP (Shearrard Thomas and Will Clarkson) met with Keith Manning (HISD) at Café Pappadeaux. The cost of the meal was reported as \$55.46.<sup>122</sup>
- Nov. 14, 2004 – Shearrard Thomas (HP) met with Tonie Jones (HISD) at the CBK Rocket Room following the Rockets game. The cost of drinks was reported as \$65.00.<sup>123</sup>
- Nov. 16, 2004 – Shearrard Thomas (HP) met with Laura Palmer (HISD) at Luling City Market Bar-B-Que (aka Renegades Inc.). The cost of the meal was reported as \$56.06.<sup>124</sup>
- Nov. 20, 2004 – Shearrard Thomas (HP) met with Steve Kim (HISD) and Frankie Wong (MSE) at Uptown Sushi. The cost of drinks and the meal was reported as \$168.62.<sup>125</sup>
- Dec. 14, 2004 – Shearrard Thomas (HP) met with HISD representatives Laura Palmer and Pat Collins at Collina's Italian Café. The cost of the meal was reported as \$205.56.<sup>126</sup>
- Dec. 16, 2004 – Shearrard Thomas (HP) purchased \$100 gift cards from Morton's and Pappadeaux 2 for HISD employees Pat Collins, Laura Palmer, Steve Kim and Bill Edwards.<sup>127</sup>
- Dec. 16, 2004 – HP sponsors a Christmas party for HISD employees (Laura Palmer, Bill Edwards) and MSE employees at Fogo de Chao. The cost of the meal was reported as \$622.13.<sup>128</sup>
- Dec. 19, 2004 – Shearrard Thomas (HP) met with Steve Kim (HISD) and Frankie Wong (MSE) at the Cotton Exchange Bar. The cost of the meal was reported as \$223.00.<sup>129</sup>
- Dec. 20, 2004 – Shearrard Thomas (HP) met with Monica Brown (HISD) at Strawberry Patch. The cost of the meal was reported as \$81.20.<sup>130</sup>
- Dec. 27, 2004 – Larry Lehmann (Acclaim) loaned Laura Palmer (HISD) \$60,000 to pay off her retirement cash-out by the end of the year.<sup>131</sup>

<sup>122</sup> See Shearrard Thomas' HP expense report for the week of 10/25/04 to 11/5/04 (attached at Tab 106).

<sup>123</sup> See Shearrard Thomas' HP expense report for the week of 11/8/04 to 11/19/04 (attached at Tab 107).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> See Shearrard Thomas' HP expense report for the week of 12/6/04 to 12/17/04 (attached at Tab 108).

<sup>127</sup> *Id.*

<sup>128</sup> See Shearrard Thomas' HP expense report for the week of 11/22/04 to 12/3/04 (attached at Tab 109).

<sup>129</sup> See *supra* Note 126 (Tab 108).

<sup>130</sup> See Shearrard Thomas' HP expense report for the week of 12/20/04 to 12/31/04 (attached at Tab 110).

<sup>131</sup> See *supra* note 109 at DA 425-426 (Tab 96). See also, Dec. 27, 2004 Round Top State Bank transfer receipt (attached at Tab 111).

The acceptance of these meals, trips, and other gratuities by HISD employees violated E-Rate Program rules regarding fair and open competitive bidding and the avoidance of improper relationships between E-Rate program applicants and their service providers. It also violated HISD's own policies that prohibited HISD employees from accepting such gifts and gratuities from HISD vendors. HISD's Conflict of Interest Policy, DBD (Local), issued on May 21, 2001 states: "An employee shall not accept or solicit any gift, favor, service or other benefit that could reasonably be construed to influence the employee's discharge of assigned duties and responsibilities." On October 9, 2002, HISD adopted Standard Practice Memorandum, No. 4168, which strengthened the prohibition on gifts and mandated reporting requirements (attached at Tab 78). This memorandum provides:

Gifts. No administrative employee of HISD shall accept any gift, favor, loan, or service that might reasonably tend to influence him or her in the discharge of his or her official duties.

(1) Approval and Reporting of Gifts. Any administrative employee who has accepted any gift, favor, loan, or service in excess of \$25 in value is required to file an itemized statement and attach it to the Conflict of Interest Statement at the time he or she signs the statement....It is strongly recommended, however, that no administrative employee accept any gift, favor, loan or service in excess of \$25 in value without securing prior approval from his or her immediate supervisor. Such approval must be secured in writing. If an administrator follows this process, it will not be necessary to annually list an itemized statement of those gifts, favors, loans, or services that are in excess of \$25 in value. The accumulated value of unreported items from any single source should never exceed \$50 annually.

(2) Expense-Paid Trips. No administrator should ever accept a trip which has a company, firm, or institution paying the cost of said trip without securing written approval from the district in advance. *Id.* at ¶ 6a.

Confidential Information. No administrative employee of HISD shall disclose confidential information gained by reason of his or her official position, nor shall he or she otherwise use such information for his or her personal gain or benefit. *Id.* at ¶ 6(d).



The offering and acceptance of these gifts also violated the conditions of HISD's RFPs for projects 03-11-03, 03-11-04, and 03-11-05.<sup>132</sup> All of these RFPs included Section 3.6 "Supplier Conduct" which states: "No gratuities of any kind will be accepted including meals, gifts, or tips. Violation of these conditions will subject the supplier to immediate disqualification from the proposal process." *Id.* Based on the language of HISD's RFPs, ACS, MSE and HP should have been disqualified from bidding process in light of their violation of this condition in HISD's RFPs.

Further, all of ACS' FRNs for HISD's Form 471, Application Nos. 398823 and 398827, were subject to rescission per the HISD Settlement Agreement. *See HISD Settlement Agreement* at Appendix B, Part 2.

FCC regulations governing the Schools and Libraries Support Mechanism require applicants and service providers to comply with all FCC rules and all applicable state and local procurement laws. *See, e.g.,* 47 C.F.R. §§ 47 C.F.R. §§ 54.504, 54.511. Because HISD violated the FCC's competitive bidding rules and its policies, USAC is required to rescind the funding commitments issued for Form 471, Application Nos. 398823 and 398827, and recover any improperly disbursed funds in accordance with FCC directives.<sup>133</sup>

### **C. Assignment of Contracts to Lakehills Does Not Cure the Underlying Competitive Bidding Violations**

On January 1, 2007, Lakehills acquired all of the limited and general partnership interests in Southwest Analytical Computer Services ("SWACS").<sup>134</sup> On January 15, 2007, ACS informed HISD that it had transferred all of its assets and liabilities to Lakehills. Mr. Trifilio informed HISD that "[t]his transfer includes all facilities, employees, contracts, certification, and capabilities . . . I have been assured that operations will continue as usual and Lakehills will honor all existing contracts and agreements."<sup>135</sup> Attached to the memorandum was the "Lakehills Transition Plan for Houston Independent School District," prepared January 18, 2007. *Id.* In this transition plan, it notes that "Scott Blakenship will continue to manage all aspects of the Houston branch and [HISD] will continue to work with all of the same employees." *Id.* at 3. The transition plan also notes that "Lakehills agrees to deliver computing system products and services to HISD in accordance with all of the terms of agreement between [ACS] and HISD." *Id.*

<sup>132</sup> *See* Tabs 80, 81 & 82.

<sup>133</sup> *See Changes to the Bd. Of Directors of the Nat'l Exchange Carrier Ass'n, Federal-State Joint Bd. On Universal Service*, CC Docket Nos. 96-45, 97-21, Order, FCC 99-291 (1999) ("Commitment Adjustment Order"); *Changes to the Bd. Of Directors of the Nat'l Exchange Carrier Ass'n, Federal-State Joint Bd. on Universal Service*, CC Docket nos. 96-45, 97-21, Order, 15 FCC Rcd 7197 (1999) ("Commitment Adjustment Waiver Order"); *Changes to the Bd. of Directors of the Nat'l Exchange Carrier Ass'n, Federal-State Joint Bd. on Universal Service*, CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 22975 (2000) ("Commitment Adjustment Implementation Order").

<sup>134</sup> *See* January 1, 2007 Partnership Contribution Agreement (attached at Tab 112). In May 2004, SWACS acquired the operating assets and assumed the liabilities of three entities: Analytical C.S.I, ACS, and Frank H. Trifilio dba Analytical Computer Services. *See* Tab 96 at DA 209.

<sup>135</sup> *See* Jan. 15, 2007 Mem. from Frank Trifilio (ACS) (attached at Tab 113).

The transition plan also outlines that Lakehills will request a Global SPIN change from USAC to replace all of the pre-existing ACS SPIN numbers for any pending pre-commitment and post-commitment HISD funding requests. *Id.* On February 5, 2007, the HISD BOE agreed to assignment of following contracts between HISD and ACS to Lakehills: 03-11-05; 03-11-04; 03-11-03; 06-08-11; 06-08-12; 06-08-13; 06-08-14; 04-09-10; 04-09-14; 04-09-15; 05-06-08; 05-08-10; 05-08-09; and 05-08-02.<sup>136</sup> On March 8, 2007, Kevin Killebrew, President of Lakehills, requested that USAC consolidate all E-Rate activity related to ACS' SPINs 143010780, 143005969 and 143027328 into Lakehills' SPIN No. 143010081.<sup>137</sup> This request was approved and implemented on March 9, 2007. *Id.* On July 10, 2007, Lakehills requested that "FKA Analytical Computer Services" be added to block 1 of the Form 498 for Lakehills LP SPIN 143010081.<sup>138</sup> Based upon the acquisition of ACS by Lakehills and Lakehills' request to consolidate all of ACS' SPIN numbers into its own SPIN, all HISD funding requests on the ACS/MSE contracts were rendered payable to Lakehills.

In this matter, because the underlying contracts between HISD, Region IV ESC, MSE, and ACS are deemed to be tainted because of the competitive bidding violations described above, USAC is prohibited by Commission rules from disbursing funding related to these contracts irrespective of the assignment of the contracts to Lakehills. FCC rules require USAC to rescind funding commitments in all or part, and recover funds when USAC learns that funding commitments and/or disbursements of funds were inconsistent with program rules.<sup>139</sup> Specifically, FCC rules require USAC to "recover the full amount disbursed for any funding requests in which the beneficiary failed to comply with the Commission's competitive bidding requirements as set forth in section 54.504 and 54.511 of [the FCC's] rules and amplified in related Commission orders."<sup>140</sup> Here, because HISD and its vendors failed to comply with the FCC's competitive bidding rules, USAC is required to rescind the funding commitments and seek recovery of any disbursed funds.

Additionally, the FCC has provided additional guidance in cases where vendors have submitted invoices to USAC for payment, but the underlying contracts the vendors are relying upon are found to be tainted due to competitive bidding violations. The FCC has directed USAC not to pay such invoices and to seek recovery of any funds that was improperly disbursed. Specifically, the FCC explained that when the underlying contract for work to be performed is found to be tainted, "no providers performing work under

<sup>136</sup> See Consent to Assignment of Contracts Between [HISD] and [ACS] to Lakehills Consulting LP (attached at Tab 114).

<sup>137</sup> See Tab 115.

<sup>138</sup> See Tab 116.

<sup>139</sup> See *Federal-Joint Bd. on Universal Service, Changes to the Bd. of Directors of the Nat'l Exchange Carrier Ass'n*, CC Dockets Nos. 96-45, 97-21, FCC 99-291 (1999); *Federal-Joint Bd. on Universal Service, Changes to the Bd. of Directors of the Nat'l Exchange Carrier Ass'n*, CC Docket Nos. 96-45, 97-21, FCC 00-350 (2000); *Federal-State Joint Bd. on Universal Service, Changes to the Bd. of Directors of the Nat'l Exchange Carrier Ass'n, Schools & Libraries Universal Support Mechanism*, Order on Reconsideration and Fourth Rep. & Order, CC Docket Nos. 96-45, 97-21, 02-6, 19 FCC Red 15252 (2004) ("Fourth Rep. & Order").

<sup>140</sup> *Schools & Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Rep. & Order and Order, 19 FCC Red 15808, ¶ 21 (2004).

that contract are entitled to receive funding under the E-rate program.”<sup>141</sup> The FCC continued with “[p]etitioners’ work performance and conduct are not dispositive of the question of whether Petitioners are entitled to the E-Rate funding at issue . . . the contract . . . was awarded outside of a fair and open competitive bidding process in violation of the Commission’s rules and requirements, and the parties to that contract are therefore not entitled to any E-Rate funding.” *Id.* The FCC further found that “to the extent that any MSE consortium members were paid under the E-Rate contract at issue, the Commission’s rules require USAC to recover those funds.” *Id.*

Similarly, as explained above, HISD, and its vendors ACS, MSE, and HP failed to conduct a fair and open competitive bidding process and the contracts awarded to Region IV ESC, ACS, and MSE in Funding Years 2002, 2003, and 2004 are determined to be tainted due to these rule violations. USAC is prohibited by Commission rules and orders from disbursing funding that is based on these contracts and must recover any funding that was improperly disbursed pursuant to these contracts. The fact that HISD and ACS assigned these contracts to Lakehills or that Lakehills may have performed work pursuant to these contracts does not cure the underlying competitive bidding violations that occurred at the time HISD awarded these contracts to Region IV ESC, ACS, and MSE.

### **III. Conclusion**

Based on the totality of the circumstances and after review of all available documentation submitted in this matter, USAC is rescinding the funding commitments for the Form 471 application numbers cited on the first page of this letter. As discussed above, under separate cover, you are being sent CAL letters for these applications and related funding requests. If you wish to appeal these decisions, please refer to the instructions included in the CAL letters.

Sincerely,

Schools and Libraries Division  
Universal Service Administrative Company

cc: Lakehills Consulting, LP

Enclosures

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<sup>141</sup> *In the Matter of Request for Review of a Decision of the Universal Service Administrator by Lazo Technologies, Inc., et al.*, SLD Nos. 360412, 360904, 360931, 369205, 369537, CC Docket No. 02-6, 24 FCC Rcd 10675, 10679, DA 09-1797 (Aug. 12, 2009). The Petitioners appealed the Wireline Competition Bureau decision on September 11, 2009, and the matter is currently on review before the full Commission.



Kevin Killebrew

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Schools & Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2004: July 1, 2004 - June 30, 2005

March 29, 2011

Kevin Killebrew  
Lakehills Consulting, LP  
4202 Directors Row Suite 100  
Houston, TX 77092

Re: SPIN: 143010091  
Service Provider Name: Lakehills Consulting, LP  
  
Form 471 Application Number: 398823  
Funding Year: 2004  
  
FCC Registration Number:  
  
Applicant Name HOUSTON INDEP SCHOOL DISTRICT  
Billed Entity Number: 141223  
Applicant Contact Person: Jacqueline K. Martin

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust the overall funding commitment. The purpose of this letter is to make the required adjustments to the funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the service provider is responsible for all or some of the program rule violations. Therefore, the service provider is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).

Schools and Libraries Division - Correspondence Unit  
100 South Jefferson Road, P.O. Box 902, Whippany, NJ 07981  
Visit us online at: [www.usac.org/sl](http://www.usac.org/sl)

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
  - Billed Entity Name,
  - Form 471 Application Number,
  - Billed Entity Number, and
  - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.  
To submit your appeal to USAC by email, email your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org). USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 S. Jefferson Rd.  
P. O. Box 902  
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.



On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to the applicant for informational purposes. If USAC has determined the applicant is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the applicant detailing the necessary applicant action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or the applicant(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds the Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the service provider is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc: Jacqueline K. Martin  
HOUSTON INDEP SCHOOL DISTRICT

Funding Commitment Adjustment Report  
Form 471 Application Number: 398823

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Funding Request Number:	1123651
Contract Number:	03-11-05
Services Ordered:	INTERNAL CONNECTIONS
Billing Account Number:	
Original Funding Commitment:	\$11,360,735.49
Commitment Adjustment Amount:	\$11,360,735.49
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$449,884.14
Funds to be Recovered from Service Provider:	\$449,884.14

Funding Commitment Adjustment Explanation:

After review of the materials received in this matter, USAC has determined to rescind commitment in full because Houston Independent School District (HISD) failed to conduct an open and fair competitive bidding process. As discussed in the attached Letter of Further Explanation, it is evident that HISD determined that it would award contracts to Hewlett Packard (HP), Analytical Computer Services (ACS) and Micro System Engineering (MSE), prior to completion of the competitive bidding process. The documents reviewed also demonstrate that HISD met multiple times with these vendors during the competitive bidding period when the bids were being reviewed and before the contracts were awarded to ACS and MSE. There is also evidence that meals and other gratuities were offered by the vendors and accepted by HISDs employees in violation of HISDs policies and the terms of HISDs RFPs regarding supplier conduct. The funding for the requests that rely on these contracts is hereby rescinded because the competitive bidding process violated FCC rules, as well as HISDs own policies and the terms of the RFPs. Commission rules require USAC to pursue repayment of unlawfully distributed funds from the party or parties that committed the rule or statutory violation. Pursuant to the terms of the March 8, 2009 Settlement Agreement between the U.S. Department of Justice, the FCC, and HISD, USAC will not seek further recovery from HISD. In accordance with the Fourth Report & Order (FCC 04-181,p15), USAC will seek recovery from Lakehills Consulting, L.P. as successor-in-interest to the contracts.

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Funding Request Number:	1130318
Contract Number:	03-11-03
Services Ordered:	INTERNAL CONNECTIONS
Billing Account Number:	
Original Funding Commitment:	\$642,086.91
Commitment Adjustment Amount:	\$642,086.91
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$619,993.45
Funds to be Recovered from Service Provider:	\$619,993.45

Funding Commitment Adjustment Explanation:

After review of the materials received in this matter, USAC has determined to rescind commitment in full because Houston Independent School District (HISD) failed to conduct an open and fair competitive bidding process. As discussed in the attached Letter of Further Explanation, it is evident that HISD determined that it would award contracts to Hewlett Packard (HP), Analytical Computer Services (ACS) and Micro System Engineering (MSE), prior to completion of the competitive bidding process. The documents reviewed also demonstrate that HISD met multiple times with these vendors during the competitive bidding period when the bids were being reviewed and before the contracts were awarded to ACS and MSE. There is also evidence that meals and other gratuities were offered by the vendors and accepted by HISDs employees in violation of HISDs policies and the terms of HISDs RFPs regarding supplier conduct. The funding for the requests that rely on these contracts is hereby rescinded because the competitive bidding process violated FCC rules, as well as HISDs own policies and the terms of the RFPs. Commission rules require USAC to pursue repayment of unlawfully distributed funds from the party or parties that committed the rule or statutory violation. Pursuant to the terms of the March 8, 2009 Settlement Agreement between the U.S. Department of Justice, the FCC, and HISD, USAC will not seek further recovery from HISD. In accordance with the Fourth Report & Order (FCC 04-181, p15), USAC will seek recovery from Lakehills Consulting, L.P. as successor-in-interest to the contracts.